IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

CHAMBER SUMMONS NO. 1572 OF 2004
IN
SUMMARY SUIT NO.3038 OF 2003

Tata Motors Ltd ..... Plaintiff
vs.
M/s. Rahul Motors and Ors. ..... Defendants

S. Kothari with A. Joshi i/b. Mulla and mulla and Cragie Blunt and Caroe for the plffs.

H. Tur with R.M. Vanoo for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 2ND MAY, 2005.

P.C. :

1. The present chamber summons is taken out for revocation of leave which was granted under clause-12 of the letters Patent.

2. The present suit has been filed by the plaintiff for the recovery of sum of

Rs.1,22,963.45/-. The jurisdiction clause in the said suit reads as under :

> . The said dealership agreement at Exhibit-A above was entered into by the plaintiff and the defendants at Mumbai and the accounts of the defendants are maintained at Mumbai. the clause 30(a) thereof specifically stipulated that the courts at MUmbaui would have exclusive jurisdiction to decide and determine any dispute or difference arising from or incidental to or touching upon the said agreement. The said 21 invoices cum delivery challans were issued pursuant to the terms of the said agreement. the material part of the cause of action, therefore, has arisen in Mumbai. The defendants, however, carry on business and reside at Rohtak in the State of Haryana and the said Deed of Guarantee and the Power of Attorney at Exhibits-B and C respectively were executed at Rohtak. A part of cause of action, thus, has arisen outside the Ordinary Civil Jurisdiction of this Hon'ble Court. The plaintiff submits that with leave under Clause XXI of the Letters Patent being granted to the plaintiff, this Hon'ble Court will have the jurisdiction to entertain, try and determine the suit."

2. Learned counsel for the defendant contends that the leave granted by this court should be revoked because the agreement dated 18.11.00 which is a distributorship agreement is

a fraudulent agreement. He has drawn my attention to the deed of guarantee dated 17.11.2000 which also refers to the dealership agreement. It is his contention that because the dealership agreement is dated 18.11.2000 and is referrred to in Guarantee dated 17.11.2000 the actual agreement for dealership is some other agreement and not the suit agreement. It is thus contended that the dealership agreement is ex-facie bogus and fraudulent and therefasdore the leave granted by this court under clause 12 of the letters patent by relying upon the various clauses of the said dealership agreement should be revoked.

3. It is by now well settled that the jurisdiction of the court must be determined on the basis of averments made in the plaint. It is not possible at this stage to decided whether the agreement of dealership is fraudulent and/or otherwise. The said finding can be given only after the trial of the suit.

4. Apart therefrom I find that under clause-30 of the dealership agreement executed between the parties there is an express provision which inter-alia indicates that the dealership agreement is deemed to have been executed in the territory of Mumbai and thus the agreement and cause of action there under shall be subject to the jurisdiction of Mumbai. In view of the agreements between the parties to treat the dealership agreement executed at Mumbai this court shall have jurisdiction to entertain an try the present suit and the chamber summons taken out for revocation of leave on the aforesaid ground is totally misconceived. The chamber summons is accordingly dismissed with no order as to costs.

sd/-

****